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BOOK REVIEWS

Lemuel Shaw: Chief Justice of the Supreme Judicial Court of Massachusetts.
By Frederic Hathaway Chase. Boston and New York, Houghton Mifflin Company. 1918. pp. 330.

Not only to the lawyers of Massachusetts but to all students of American legal history the figure of Chief Justice Shaw looms large; but to the present generation it has come to be rather a traditional figure, an impression of learning, solidity and power, but dim of outline and lacking in detail. For this impression, we have perhaps been equally indebted to his vigorous and illuminating legal opinions,—not only constantly read and cited, but so often the “leading case,” which virtually settled the law on the point involved—and to the familiar portraits that show us his massive head, with its strong and rugged features, and its distinctly leonine aspect. It is strange that a man whose eminence in a great calling and whose title to lasting fame have been so long unquestioned should have waited nearly sixty years after his death for a biographer. We are of course the more indebted to Judge Chase for now supplying the lack; and it is rather a tribute to the success with which he has handled the materials which the lapse of time had left available, than a reflection on his work, to wish after reading the book that the task might have been undertaken earlier. The biographer has made his subject interesting; and has thereby whetted the appetite of the reader for still more intimate details of the life and personality of the great judge,—details which probably only the memories of his intimates and associates, now long since dead, could have furnished.

It is not to be inferred, however, that the book is disappointing. The author has evidently made patient and fruitful search of all records available, and has been remarkably successful in connecting and interpreting his materials, so as to give us a real picture of Shaw as a youth and as a man, as a practicing lawyer, as a citizen, and finally as a judge. If now and then, where definite information was especially meagre, he has drawn inferences in regard to Shaw's activities, thoughts and feelings on minor matters from rather slight evidence, this has been done with notable restraint. We are told the basis of these inferences, and are at liberty to agree or disagree; and a doubtful outline here or there nevertheless helps to complete a picture whose fidelity in its main features is convincing.

The chapters dealing with the Webster trial, with the cases which came before the Chief Justice involving religious controversies, and with those which arose during the height of the abolitionist agitation, are especially interesting and valuable, not only in the light they throw on Shaw's immovable quality as a fearless and dispassionate judge, concerned in the weighing of each case only with the “trepidations of the balance,” but also in the lesson they teach. It seems so incongruous now as to be hardly credible that a New York newspaper could have described Lemuel Shaw as “the first of American judges associated in position and character with the band of cruel and corrupt English judges of whom Jeffries is foremost”; that Richard H. Dana characterized him as “a man of intense and doting biases” and “of no courage or pride”; and that Wendell Phillips accused him of betraying “the bench and the courts of the Commonwealth and the honor of a noble profession.” Yet the ultimate public verdict is summed up in Senator Hoar's remark that Shaw was venerated as if he were a demi-god, and in his native county as a god; and there is ample

testimony from others to support almost as strong a statement. The significant lesson is that such universal veneration was not earned by any cautious avoidance of critical issues or by any fortunate immunity, but by a judicial courage that knew no evasion, and a high indifference to all personal considerations.

This indifference was not only a moral but a mental quality. Courage alone will not make a great judge. Shaw had not only the learning and intellectual capacity to fit him for his task, but also the rare gift of genuine mental detachment, apparently without effort, from all considerations that might move him as a man but did not concern him as a judge.

And yet this is far from meaning that "the Chief," as apparently the bar used to call him, viewed legal problems as something purely abstract and technical, to be solved by the study of books divorced from the study of men. Judge Chase rightly emphasizes Shaw's conception of the common law, not as a multitudinous patchwork of fixed precedents, one of which must be found if possible and fitted to every case, but as a living body of principles, based on fundamental conceptions of right and justice, requiring chiefly clear thinking and logical analysis to determine their application to new situations, and capable always of adaptation to the growing and changing needs of the community. It was in this adaptation that Justice Holmes, himself once Chief Justice of Massachusetts, thought the genius of his great predecessor stood out most prominently. Judge Chase quotes from *The Common Law* an interesting comment on one of Shaw's decisions, in which Holmes declared that "the strength of that great judge lay in accurate appreciation of the requirements of the community whose officer he was"; that "few have lived who were his equals in their understanding of the grounds of public policy to which all laws must ultimately be referred"; and that it was this which made him,—and here Holmes in turn was quoting Judge Curtis,—"the greatest *magistrate* which this country has produced."

Judge Chase's book, however, is mainly a biography, rather than a critical discussion of Shaw's judicial work or his contribution to American jurisprudence. The chapters devoted to a brief review of important decisions are illustrative rather than exhaustive. The book is compact and readable, and while naturally, since Shaw's life was almost wholly devoted to the law, it will be chiefly interesting to lawyers, both its style and at least a good part of its content are adapted to hold the attention of such lay readers as may have a taste for biography and be willing to venture on one judge's life of another.

H. W. D.

A Treatise on The Law and Practice of Receivers. By Ralph E. Clark. Cincinnati, The W. H. Anderson Company. 1918. 2 vols. pp. lxxxv, 2176.

These volumes deal with a branch of the law where there has been great need of further analysis and discussion. Receivership law concerns extremely important questions, such as those connected with the liquidation of insolvent corporations by receivers. Yet there has been no authoritative work upon the subject with the exception of High, even the last edition of which was published before much important litigation arose. The present work seems adequately to accomplish the writer's purpose. It is encyclopedic rather than analytic in form. As such it has many commendable features. Especially helpful are the forms collected in the second volume, being selections from actual cases, though a more careful editing of and exclusion of extraneous detail from the forms reproduced would have saved much valuable space without detracting from the usefulness of this portion of the work. The index is extraordinarily complete and is very conveniently arranged, far more so than is usual in law text books. The chapters on the Trading with the Enemy Act and the Alien Property Custodian are interesting, although it is rather hard to see how these subjects